

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SYNTHES (U.S.A.),

Plaintiff,

v.

SMITH & NEPHEW, INC.,

Defendant.

Civil Action No. 03-0084

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Synthes (U.S.A.) (“Synthes”), for its Amended Complaint against defendant, Smith & Nephew, Inc. (“Smith & Nephew”), alleges:

PARTIES

1. Plaintiff Synthes is a Pennsylvania partnership with a principal place of business located at 1302 Wrights Lane East, West Chester, Pennsylvania 19380.
2. On information and belief, defendant, Smith & Nephew, is a Delaware corporation with a principal place of business in Memphis, Tennessee 38116, and is doing business in this judicial district with its registered agent being CT Corporation System, 1515 Market Street, Suite 1210, Philadelphia, Pennsylvania 19102.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT FOR INFRINGEMENT OF U.S. PATENT NO. 5,053,036

5. Plaintiff Synthes is the sole owner by assignment of all right, title, and interest in and to United States Patent No. 5,053,036, entitled “Point Contact Bone Compression Plate” (“the ‘036 patent”), which was duly and legally issued by the United States Patent and Trademark Office on October 1, 1991. A copy of the ‘036 patent is attached hereto as Exhibit A.

6. On information and belief, defendant, Smith & Nephew, has been and still is infringing, contributing to and/or actively inducing infringement of the ‘036 patent in this judicial district and elsewhere in the United States by the manufacture, use, sale and/or offer for sale in the United States, or importation into the United States, of bone plates, including, but not limited to, its “Contour Plus” plates and its “PERI-LOC” plates, which embody the subject matter of and infringe one or more claims of the ‘036 patent.

7. On information and belief, Smith & Nephew’s infringement of the ‘036 patent has been and continues to be willful, wanton, deliberate and without license, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

8. Unless preliminarily and permanently enjoined by this Court, Smith & Nephew will continue its acts of infringement of the ‘036 patent to Synthes’ substantial and irreparable harm.

COUNT FOR INFRINGEMENT OF U.S. PATENT NO. 6,623,486

9. Plaintiff Synthes is the sole owner by assignment of all right, title, and interest in and to United States Patent No. 6,623,486, entitled “Bone Plating System” (“the ‘486 patent”), which was duly and legally issued by the United States Patent and Trademark Office on September 23, 2003. A copy of the ‘486 patent is attached hereto as Exhibit B.

10. On information and belief, defendant, Smith & Nephew, has been and still is infringing, contributing to and/or actively inducing infringement of the ‘486 patent in this judicial district and elsewhere in the United States by the manufacture, use, sale and/or offer for sale in the United States, or importation into the United States, of bone plates, including, but not limited to, its “PERI-LOC” plates, which embody the subject matter of and infringe one or more claims of the ‘486 patent.

11. On information and belief, Smith & Nephew’s infringement of the ‘486 patent has been and continues to be willful, wanton, deliberate and without license, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

12. Unless preliminarily and permanently enjoined by this Court, Smith & Nephew will continue its acts of infringement of the ‘486 patent to Synthes’ substantial and irreparable harm.

COUNT FOR INFRINGEMENT OF U.S. PATENT NO. 7,128,744

13. Plaintiff Synthes is the sole owner by assignment of all right, title, and interest in and to United States Patent No. 7,128,744, entitled “Bone Plating System” (“the ‘744 patent”), which was duly and legally issued by the United States Patent and Trademark Office on October 31, 2006. A copy of the ‘744 patent is attached hereto as Exhibit C.

14. On information and belief, defendant, Smith & Nephew, has been and still is infringing, contributing to and/or actively inducing infringement of the '744 patent in this judicial district and elsewhere in the United States by the manufacture, use, sale and/or offer for sale in the United States, or importation into the United States, of bone plates, including, but not limited to, its "PERI-LOC" plates, which embody the subject matter of and infringe one or more claims of the '744 patent.

15. On information and belief, Smith & Nephew's infringement of the '744 patent has been and continues to be willful, wanton, deliberate and without license, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

16. Unless preliminarily and permanently enjoined by this Court, Smith & Nephew will continue its acts of infringement of the '744 patent to Synthes' substantial and irreparable harm.

WHEREFORE, plaintiff Synthes respectfully demands judgment as follows:

- A. That this Court, pursuant to 35 U.S.C. § 271, enter an order finding that defendant, Smith & Nephew, has infringed one or more claims of the '036 patent, the '486 patent, and the '744 patent;
- B. That this Court, pursuant to 35 U.S.C. § 283, preliminarily and permanently enjoin Smith & Nephew, its officers, directors, agents, employees, successors and assigns, and any persons acting in privity or in concert with them, from making, using, selling, offering to sell, and/or importing any products that infringe the '036 patent, the '486 patent, or the '744 patent;
- C. That this Court, pursuant to 35 U.S.C. § 284, award damages adequate to compensate Synthes for Smith & Nephew's infringement, but in no event less than a reasonable royalty;
- D. That this Court increase such damages three-fold as a result of Smith & Nephew's willful, wanton and deliberate acts of infringement;
- E. That this Court order an accounting to determine the proper amount of such damages;
- F. That this Court award pre-judgment and post-judgment interest, as appropriate;
- G. That this Court award Synthes its costs, expenses and disbursements in this action, including reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;
- H. That this Court order the recall of all existing products of Smith & Nephew that infringe the '036 patent, the '486 patent, or the '744 patent and are in the possession or under the control of wholesalers and retailers;

I. That this Court order the destruction of all existing products in the possession or under the control of Smith & Nephew that infringe the '036 patent, the '486 patent, or the '744 patent; and

J. That this Court order such other relief that this Court deems just and proper.

JURY DEMAND

Plaintiff Synthes hereby demands a trial by jury for all issues triable to a jury.

Respectfully submitted,

Dated: November 13, 2006

By: /s/ Robert W. Hayes

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Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing AMENDED COMPLAINT FOR PATENT INFRINGEMENT was served upon defendant this 13th day of November, 2006, by hand delivering a true and correct copy thereof to:

Thomas E. Zemaitis, Esq.
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and by mailing, first class, postage prepaid, a true and correct copy thereof to:

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/s/ Robert W. Hayes
ROBERT W. HAYES